

APR 30 2010

Stephan Harris, Clerk
Cheyenne

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF WYOMING**

BEAVER CREEK LAND & CATTLE, LLC,)
Plaintiff,)
vs.) No. 08-CV-00202J
PHILLIP A. WOLF,)
Defendant.)

**ORDER GRANTING MOTION FOR RELEASE OF FALSE LIENS AND
REQUEST FOR SANCTIONS**

This matter comes before the Court on plaintiff's Motion for Release of False Liens and Request for Sanctions (Docket Entry 57) and the defendant's opposition thereto (Docket Entry 58). The Court, having reviewed the motion and response, the applicable law, the pleadings of record, and being fully advised, **FINDS** and **ORDERS** that the plaintiff's motion should be **GRANTED** for the reasons stated below.

1. Plaintiff seeks an order releasing false liens claimed and filed by the defendant in Teton County against property of plaintiff's counsel. The liens

have been recorded in Teton County, Wyoming and are attached to the plaintiff's "Motion for Release of False Liens and Request for Sanctions." Apparently, the defendant in the above captioned action believes he is entitled to file nonconsensual liens against counsel's property based upon a perceived default on a counterclaim.

2. No judgment has been filed in this case in favor of either party on any claim in this case. The matter remains pending and is set for trial in May of 2010.

3. In the event that defendant would prevail on his claims against plaintiff, any judgment lien would attach only to property of the plaintiff and not to property of plaintiff's counsel. His fundamental misunderstanding of the law does not justify his attempt to place liens on property of the plaintiff's counsel and will not be permitted.

4. In a diversity action, the substantive law, including the choice of law rules, of the forum state is to be applied. Moore v. Subaru of America, 891 F.2d 1445, 1448 (10th Cir. 1989); Mitchell v. State Farm Fire & Cas. Co., 902 F.2d 790, 792 (10th Cir. 1990). Under applicable Wyoming law, a lien which is groundless at the time of filing, containing material misstatements or false claims, may be stricken and released and damages may be awarded. Wyo.

Stat. § 29-1-311. Pursuant to this statutory provision, the Court may order that a lien be stricken and released, and may award damages of \$1,000.00 or actual damages, costs and reasonable attorneys' fees to be paid by the person claiming the lien – in this instance, Phillip A. Wolf.

5. Under applicable federal law, the Court may require counsel or any other person "who so multiplies the proceedings in any case unreasonably and vexatiously" to "satisfy personally the excess costs, expenses, and attorneys' fees reasonably incurred because of such conduct." 28 U.S.C. § 1927. This provision applies to the *pro se* plaintiff in this case.

6. The Court finds that the liens asserted by defendant Wolf, appearing *pro se* in this case, against the property of plaintiff's counsel Bret F. King are nonconsensual, groundless and must be stricken and released.

7. Plaintiff has also sought an award of \$3,000.00 as damages (\$1,000 for the several groundless liens filed against plaintiff's counsel's property), plus attorneys' fees and costs. The Court finds that an award of \$3,000.00 as damages is a reasonable sanction in this case, as well as reasonable attorneys' fees, expenses and costs reasonably incurred because of defendant Phillip A. Wolf's conduct.

Accordingly, for the foregoing reasons, it is hereby

ORDERED that the plaintiff's "Motion for Release of False Liens and Request for Sanctions" (Docket Entry 57) shall be, and is, **GRANTED. It is further**

ORDERED that all of the liens attached to the plaintiff's Motion for Release of False Liens and Request for Sanctions" are **declared void, of no legal effect, and shall be stricken. This Order shall constitute a full and complete release of all liens recorded by defendant Phillip Andrew Wolf against attorney Bret F. King. It is further**

ORDERED that counsel for plaintiff has permission of this Court to record a certified copy of this Order with the appropriate governmental entities in Teton County, Wyoming. **It is further**

ORDERED that defendant Phillip A. Wolf shall **be permanently enjoined from filing or attempting to file any nonconsensual liens or encumbrances against the property of counsel Bret F. King. It is further**

ORDERED that damages in the amount of **\$3,000.00 are hereby awarded and shall be paid forthwith by defendant Phillip A. Wolf. It is further**

ORDERED that defendant Phillip A. Wolf shall pay all costs, expenses and

attorneys' fees reasonably incurred by plaintiff as a result of the filing of the groundless liens which are the subject of this motion. It is further

ORDERED that Plaintiff shall file an application for costs, expenses and attorneys' fees reasonably incurred as a result of the filing of the groundless liens within ten (10) days of the date of entry of this Order. The Court will enter a separate order with respect to this application for attorneys' fees, costs and expenses without further hearing or notice.

Dated this 30th day of April 2010.



UNITED STATES DISTRICT JUDGE